

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,

Plaintiff, Defendant-in-Counterclaim.

v.

J.P. MORGAN CHASE BANK, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1,

Defendant,

and

CSFB 1999-C1 ROYALL STREET, LLC,

Defendant, Plaintiff-in-Counterclaim,

v.

WILLIAM LANGELIER and GERALD FINEBERG,

Defendants-in-Counterclaim.

Civil Action No. 05-CV-10506 (WGY)

AFFIDAVIT IN SUPPORT OF AMENDMENT TO EMERGENCY MOTION OF DEFENDANTS AND COUNTERCLAIMANT TO COMPEL DEPOSITION OF GERALD FINEBERG

I, Bruce E. Falby, depose and say as follows:

1. I represent Defendant and Counterclaimant CSFB 1999-C1 Royall Street, LLC and Defendant J.P. Morgan Chase Bank, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1 (collectively, the "Lenders"). I submit this affidavit in support of the Lenders' amended emergency motion to compel the deposition of Defendant-in-Counterclaim Gerald Fineberg (a principal of plaintiff Blue Hills Office Park LLC) and in response to assertions in the opposition to the amended motion filed by the counterclaim defendants on March 27, 2006.

2. On Friday, March 24, 2006, in the Court's absence, I attempted again to resolve this dispute created by counterclaim defendants' failure to produce Mr. Fineberg as agreed for deposition on March 21, 2006, before the expert disclosure deadline of March 31. I proposed to opposing counsel that we add expert rebuttal disclosures on April 14 (which I had previously proposed with no response by opposing counsel), with expert depositions during the two weeks thereafter, to be completed by April 28. I could then depose Mr. Fineberg on April 5, and his testimony relevant to expert issues could be addressed in expert rebuttal reports. Otherwise, I explained I would amend the emergency motion on Monday to request a deposition date for Mr. Fineberg later this week.

3. My opposing counsel Peter McGlynn said he agreed to a deposition of Mr. Fineberg on April 5, 2006, but proposed expert rebuttal disclosure and deposition dates later than April 14 and 28. I responded that later dates were unacceptable because they would impact the dispositive motion deadline of May 17. I made clear that I was not agreeing to depose Mr. Fineberg on April 5 absent agreement on the adjusted expert disclosure and deposition dates that I had proposed. We left it that we would check with our experts to see if they could be deposed during the last 2 weeks of April, as Mr. McGlynn was suggesting the expert depositions would be difficult to schedule.

4. Yesterday afternoon, Monday, March 27, 2006, Mr. McGlynn emailed that he had heard from only one of three experts, who was not available to be deposed until May 1, but that he had confirmed April 5 with Mr. Fineberg. I responded that May 1 is beyond both the existing expert deposition period (ending April 21) and the adjusted period I had proposed (ending April 28), and was unacceptable. I reminded him that I had not agreed to depose Mr. Fineberg on April 5. I also informed him that my experts are available to be deposed within both the existing period and the proposed period for expert depositions.

5. Unable to resolve matters with opposing counsel, with whom my previous efforts at accommodation have resulted in their failure to produce witnesses for deposition as scheduled, I filed our amendment to emergency motion. The amendment requests that the Court compel Mr. Fineberg's appearance on Wednesday, March 29, or alternatively, order expert rebuttal disclosure on April 10 (to increase the time for depositions), completion of expert depositions on April 28 (one week later than the present April 21 date) and the deposition of Mr. Fineberg on April 5, 2006.

Signed under the pains and penalties of perjury this 28th day of March, 2006.

/s/ Bruce E. Falby

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